



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

August 16, 1985

Robert C. Bates, Esq.
Snell & Wilmer
3100 Valley Bank Center
Phoenix, Arizona 85073

Dear Mr. Bates:

This refers to the elimination of two polling places, the implementation of a five-polling-place rotation system, the reduction in the polling hours, the provisions in the board's regulations that tie votes be decided by lot, and voting by proxy for the Navapache Hospital District in Navajo and Apache Counties, Arizona, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on June 17, 1985.

We have carefully considered the information you have provided, as well as data obtained from the 1980 Census, and information provided by other interested parties. In 1969, the board reduced the number of polling places from seven to five; one of two polling places eliminated is located on the Fort Apache Indian reservation. Each of the five remaining polling places is located a considerable distance from the reservation where the vast majority of the Native Americans live. The board also determined in 1969 that only one of the five approved polling sites would be used in an election and the "open" polling place would be rotated among the five approved sites with each election. Thus the location for voting changes with each election, and voters who reside on the reservation, as well as those in the nonhost communities, are subjected to the inconvenience of having to travel great distances in order to participate in the district's electoral process.

The burden created by this polling place rotation system is exacerbated by the fact that the operating hours of the polling places have been reduced, no transportation

is provided to those voters who live outside the community where the polling place for that particular election is located and no absentee voting procedures have been established. We are aware that this rotating system was established in order to help assure that the five communities wherein the polling places are located will retain representation on the board. As we understand this concept, it is recognized that voting is convenient only to those persons in the vicinity of the polling place and such persons thereby have an increased opportunity to elect a candidate of their choice to the board. This system has a particularly detrimental impact on Indian voters who do not reside in the vicinity of any of the approved polling places.

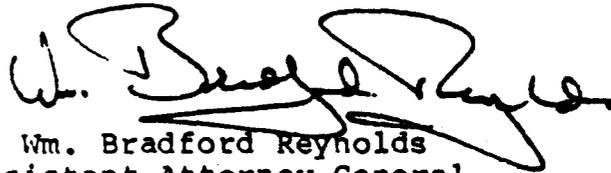
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the elimination of the two polling places, the implementation of a five-polling-place rotation system, and the reduction in the polling hours for the Navapache Hospital District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the district's election system legally unenforceable. 28 C.F.R. 51.9.

In addition, the Attorney General will make no determination at this time with respect to the provision that tie votes be decided by lot nor to voting by proxy, since these changes are directly related to the above changes which have not received preclearance under Section 5. 28 C.F.R. 51.20(b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Navapache Hospital District plans to take with respect to this matter. If you have any questions, feel free to call Poli A. Marmolejos (202-724-8388), Attorney Supervisor in our Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "Wm. Bradford Reynolds". The signature is stylized and somewhat cursive, with a large loop at the end.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division